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In the Supreme Court of the United States

OCTOBER TERM, 1990

RIVER VILLA PARTNERSHIP, ET AL., PETITIONERS

v.

**SUN BELT FEDERAL BANK, F.S.B.
(FEDERAL DEPOSIT INSURANCE CORPORATION,
RECEIVER)**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals erred in rejecting petitioners' contention that their loan obligations were procured by fraud.

2. Whether the court of appeals erred in refusing to remand the case to the district court to consider petitioners' untimely filed counterclaim.



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No. 90-151

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A12) is reported at 898 F.2d 996. The opinion of the district court (Pet. App. A13-A19) is reported at 687 F. Supp. 1038.

JURISDICTION

The judgment of the court of appeals was entered on April 6, 1990. A petition for rehearing was denied on April 25, 1990. Pet. App. A20. The petition for a writ of certiorari was filed on July 23, 1990.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).¹

STATEMENT

River Villa Partnership, a Louisiana real estate investment partnership, is the obligee on a \$1,585,000 promissory note payable to Sun Belt, F.S.B. Paul J. Landry, acting as agent and attorney-in-fact for River Villa, executed the promissory note and a collateral mortgage as part of a complex tax-free property exchange in which River Villa exchanged property it owned for property owned by third persons. Landry signed the promissory note and instruments effecting the property exchange pursuant to powers of attorney that Landry secured from eleven of River Villa's fourteen individual partners. Thereafter, River Villa, through Landry, collected rents on the property, made payments on the loan, and enjoyed the tax benefits from the property exchange. River Villa ultimately defaulted on the promissory note and Sun Belt filed suit in Louisiana state court to recover the balance. Pet. App. A2-A3, A14-A16.

River Villa responded that it was not obligated to repay the note because the powers of attorney that its partners had executed were defective. River Villa alleged that Landry had made fraudulent misrepresentations regarding the property involved in the exchange to induce the partners to execute the powers of attorney. River Villa also asserted that Landry executed the note for \$1,585,000—\$35,000 more than the amount authorized in the powers of attorney—and that, contrary to the understanding of the part-

¹ The court of appeals concluded that it lacked jurisdiction over parties other than River Villa Partnership. See Pet. App. A4-A6.

ners, the property obtained in the exchange was subject to additional, unknown financial obligations. Pet. App. A6-A12.

On May 4, 1986, Sun Belt was declared insolvent and the Federal Savings and Loan Insurance Corporation (FSLIC) was appointed as receiver.² FSLIC removed the case to federal court and the parties filed cross-motions for summary judgment. On June 3, 1988, the district court granted FSLIC's motion. The court found that River Villa's obligation under the promissory note had been incurred pursuant to valid powers of attorney granted to Landry. The court also found that although Landry had exceeded the \$1,550,000 borrowing limit specified in the powers of attorney, River Villa had ratified Landry's transaction by accepting rent on the exchanged property and by making installment payments on the promissory note. Pet. App. A3, A13-A19.

On July 25, 1988, River Villa filed a motion requesting the district court to reconsider its grant of summary judgment. It also submitted a motion for leave to file a counterclaim alleging that River Villa's obligation to Sun Belt should be cancelled because Landry's fraud in connection with the loan and property exchange transaction was part of a larger fraud committed by Sun Belt's president and attorney. The district court denied both motions on September 2, 1988, explaining that it adhered to its previous decision and that, among other defects, River Villa's

² The Federal Deposit Insurance Corporation (FDIC) later assumed FSLIC's role as receiver for Sun Belt pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, §§ 401-406, 103 Stat. 354-363. Accordingly, the FDIC is the respondent in this action.

counterclaim was untimely under Fed. R. Civ. P. 13. See Pet. App. A4, A12; Sept. 2, 1988 Tr. 2-5.

The court of appeals affirmed the district court's decision. Pet. App. A1-A12. That court agreed with the district court that River Villa had authorized Landry to obligate the partnership through the powers of attorney and through subsequent ratification of Landry's actions. *Id.* at A7-A10. The court rejected River Villa's defense that Landry and a Sun Belt officer had defrauded the partnership, concluding that this Court's decisions in *Langley v. FDIC*, 484 U.S. 86 (1987), and *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942), precluded River Villa from asserting alleged misrepresentations as a defense to FSLIC's attempt to collect on a facially unqualified promissory note. Pet. App. A10-A12. Finally, the court of appeals held that the district court did not abuse its discretion in refusing to grant River Villa's motion to file an untimely counterclaim. *Id.* at A12.³

³ On June 14, 1989, while its appeal was pending, River Villa submitted a second counterclaim to the district court. River Villa did not request leave from the district court to file the document (see Fed. R. Civ. P. 13(f)), and the district court made no ruling as to this counterclaim.

ARGUMENT

1. River Villa contends that the court of appeals and the district court misapplied this Court's decisions in *Langley* and *D'Oench, Duhme*. Pet. 15-17. The lower court decisions, however, rest largely on the application of Louisiana law to the facts of this case. River Villa had asserted below that it was not liable to repay Sun Belt because the partnership's agent, Landry, exceeded his power to obligate the partnership. The courts rejected that argument on state law grounds, holding that the partners had executed valid powers of attorney and that, where Landry had exceeded the authority expressly conferred in the powers of attorney, the partnership had ratified his actions. See Pet. App. A8-A9, A16-A18.

The courts also held that if—as River Villa alleged—Landry and a Sun Belt officer had procured the powers of attorney through fraud, that fraud could not defeat FSLIC's right to recover on facially unqualified loan documents. Pet. App. A10-A12, A18-A19. This is simply a straightforward application of *Langley* and *D'Oench, Duhme*. River Villa apparently believes that Landry's departures from the terms of the powers of attorney resulted in "facial defects" in the loan documents that precluded application of the federal rule set forth in those cases. See Pet. 5, 16. As we have explained, however, both courts concluded that River Villa had ratified actions that Landry took in excess of the authority expressly granted through the powers of attorney. Thus, Landry's departures from the powers of attorney cannot absolve River Villa of its obligations, irrespective of *Langley* and *D'Oench, Duhme*. At bottom, River Villa simply asserts that it was entitled to the benefits of the promissory note without the burden of repayment.

River Villa also asserts that *Langley* and *D'Oench, Duhme* permit it to show “‘the sort of fraud that procures a party’s signature to an instrument without knowledge of its true nature or contents’ which ‘render[s] the instrument entirely void.’” Pet. 16. As the court of appeals explained, however, River Villa did not allege before the district court that this case involved that sort of fraud. Pet. App. A12. Instead, River Villa alleged only that Landry had lied to the partners to induce them to sign “what they admittedly knew to be powers according Landry broad discretion.” *Ibid.* As the court of appeals correctly observed (*ibid.*), “fraud in the inducement” does not defeat FDIC’s rights. See *Langley*, 484 U.S. at 93. In any event, River Villa’s challenge to the lower courts’ characterization of the facts in this case does not present an issue warranting this Court’s review.

2. River Villa also contends that the court of appeals erred in refusing to remand the case to the district court for consideration of River Villa’s counterclaim against Sun Belt. Pet. 13-15. River Villa does not dispute that its counterclaim was untimely under Fed. R. Civ. P. 13. Indeed, River Villa first presented the counterclaim “six months after moving for summary judgment, five and one-half months after the FSLIC moved for summary judgment, six weeks after the court’s ruling on these motions, and almost three years after Sun Belt first filed suit.” Pet. App. A12. The court of appeals correctly held that the district court did not abuse its discretion in refusing River Villa’s motion to file the counterclaim. *Ibid.* See *Lujan v. National Wildlife Fed’n*, 110 S. Ct. 3177, 3191-3193 (1990).

River Villa essentially contends that its failure to comply with the time limits set forth in the Federal Rules should be excused because until this Court’s

decision in *Coit Independence Joint Venture v. FSLIC*, 489 U.S. 561 (1989)—recognizing that a district court could adjudicate creditor claims against a failed thrift—River Villa believed that its motion for leave to file the counterclaim would have been futile. Pet. 14-15. However, River Villa offered its counterclaim and the district court refused to accept it long before *Coit* was decided. River Villa moved for leave to file its counterclaim on July 25, 1988, the district court declared it untimely on September 2, 1988, and this Court decided *Coit* on March 21, 1989. Thus, River Villa's excuse is unpersuasive.⁴

River Villa also complains that "the opinion of the Fifth Circuit simply ignores the issue of the second counterclaim, as if it never existed." Pet. 14. As we have explained (note 3, *supra*), River Villa submitted its "second counterclaim" to the district court while this case was on appeal. River Villa did not seek leave from the district court to file the counterclaim, and the district court took no action on it. Thus, the court of appeals did not address that filing. The court of appeals acted properly and the matter plainly does not warrant this Court's review.

⁴ River Villa observes (Pet. 14 & n.8) that the court of appeals has remanded other district court decisions for consideration of creditor claims. The cases River Villa cites, however, involve timely filed judicial claims.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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